NO. 91-1565

Supreme Court, U.S.
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IN THE

Supreme Court of the United States

OCTOBER TERM, 1992

CHARLES BILLY MABRY, a/k/a MAZE,

Petitioner,

v.

UNITED STATES OF AMERICA,

Respondent.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

PETITION FOR A WRIT OF CERTIORARI

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QUESTION PRESENTED

1. Did the District Court err in denying the Petition's Motion to Dismiss at the Close of the evidence on the ground that such was insufficient to justify a verdict of guilty beyond a reasonable doubt by a rational trier of fact?

PARTIES TO THE PROCEEDING

CHARLES BILLY MABRY, a/k/a Maze,

Petitioner,

UNITED STATES OF AMERICA,

Respondent.

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ASSIGNMENT OF ERROR

The District Court erred in denying the Petitioner's Motion to Dismiss on the ground that the evidence was insufficient to justify a verdict of guilty beyond a reasonable doubt by a rational trier of fact.

JURISDICTION

The jurisdiction of this Court is invoked pursuant to the provisions of 28 U.S.C. 1254(1).

STATEMENT OF THE CASE

On November 28, 1989, the United States Grand Jury for the Middle District of North Carolina returned an 11 count indictment against Defendants Betty Jean Murphy and Charles Billy Mabry, also known as Maze, as well as against three additional named defendants. (App. 2, 14-21)

On December 26, 1989, the Grand Jury returned a superseding indictment against Defendants Murphy and Mabry, as well as against four named co-defendants. (App. 2, 22-29) Count One of the indictment charged all of the defendants which conspiracy to distribute quantities of cocaine hydrochloride and cocaine base, in violation of 21 U.S.C. 841(a)(1). The indictment also charged Defendant Murphy with distribution of quantities of cocaine hydrochloride, in

violation of 21 U.S.C. 845(a). (Id.) The indictment charged Defendant Mabry with two counts of distributing quantities of cocaine base, in violation of 21 U.S.C. 841(a)(1) and (b)(1)(B).

Defendant Mabry was arraigned on January 2, 1990, before the Honorable Russell A. Eliason, United States Magistrate for the Middle District of North Carolina, sitting in Winston-Salem. (App. 3) At that time, Defendant Mabry entered pleas of not guilty to all counts of the indictment. (Id.)

Defendant Murphy was arraigned on January 2, 1990, before the Honorable Richard C. Erwin, Chief United States District Court Judge for the Middle District of North Carolina, sitting in Winston-Salem. (App. 8) At that time, Defendant Murphy entered pleas of not guilty to all counts of the indictment. (Id.)

On February 12, 1990, jury selection began before the Honorable N. Carlton Tilley, United States District Court Judge for the Middle District of North Carolina, sitting in Winston-Salem. (App. 4, 60) At the conclusion of jury selection on that date, upon hearing various motions, court adjourned for the day. (App. 59) Presentation of evidence by the Government began the next day, February 13, 1990.

Judge Tilley denied the motions of defense counsel for judgment of acquittal at the close of the Government's evidence and at the close of all the evidence. (App. 4, 816, 866) With regard to the motion of Defendant Mabry for judgment of acquittal on count one of the superseding indictment, which charged him with conspiracy, the court reserved ruling in both instances. (App. 817, 866)

On February 21, 1990, the jury returned

verdicts finding Defendants Mabry and Murphy guilty, as charged. (App. 4) At that time, Defendant Mabry renewed his motion for judgment of acquittal, and such was denied by order of the Court on April 2, 1990. (App. 4, 5)

Judge Tilley held a sentencing hearing in Greensboro on April 27, 1990, with regard to Defendant Mabry. (App. 5) Judge Tilley sentenced the Defendant to 120 months in prison, a term of supervised release of 8 years, and a $150.00 special assessment. (App. 176-880) On May 2, 1990, Defendant Mabry gave notice of appeal to the United States Court of Appeals for the Fourth Circuit. (App. 881)

Judge Tilley held sentencing hearings in Greensboro on May 10, 1990, and in Winston-Salem on July 5, 1990 with regard to Defendant Murphy. Judge Tilley sentenced Defendant

Murphy to 245 months imprisonment, a special assessment of $100.00, as well as 12 years supervised release. (App. 13, 1028-1031) On July 13, 1990, Defendant Murphy gave notice of appeal to the United States Court of Appeals for the Fourth Circuit. (App. 1032)

On December 24, 1991, a panel of the United States Court of Appeals for the Fourth Circuit affirmed the judgment of the District Court.

STATEMENT OF THE FACTS

At trial, evidence for the Government tended to show that:

Prior to December 1988, Ophelia Fleming dealt cocaine and "crack" cocaine for approximately one and one-half years. In December 1988, Ophelia Fleming needed a new source of cocaine, so she met with Homer McKinley Peak, who arranged a meeting with Betty Jean Murphy at Murphy's residence, 204 Marvin Boulevard, Winston-Salem, North Carolina. Initially, Murphy wanted to go through Peak when distributing cocaine to Ophelia Fleming. The first transaction involved 2 ounces of powder cocaine, which Ophelia Fleming was able to distribute the first day. Peak made arrangements on two more occasions for Ophelia Fleming to receive quantities of 2 ounces or more from Murphy. A

couple of weeks later Murphy began dealing directly with Ophelia Fleming, who cooked the powder cocaine into "crack" and had her son, Steven "Easy" Fleming, then age 16, sell it on the street.

In December 29, 1988, in the 1100 block of East 15th Street, Winston-Salem, North Carolina, Homer McKinney Peak sold .14 grams of "crack" cocaine contained in a tinfoil packet for $25.00 to an undercover officer of the Winston-Salem Police Department. Later that evening Peak was arrested by police officers after Peak attempted to flee on foot and a similar amount of "crack" in a tinfoil packet was found in Peak's left front jeans pocket.

Acting on a tip from a confidential informant on January 13, 1989, vice officers of the Winston-Salem Police Department stopped Ophelia Fleming, Gail Fleming, and Shirley

Lewis in a vehicle, but found no drugs. Ophelia Fleming and Gail Fleming later testified that Shirley Lewis had hidden 2 1/2 ounces of "crack" cocaine contained in a plastic bag in her vagina so officers could not find it.

During late March and early April 1989, Gail Fleming and Shirley Lewis made two flights by commercial airlines for Defendant Murphy from Greensboro to New York City to purchase a quantity of cocaine powder. The second trip on April 6, 1989 was for 12 ounces, but Gail Fleming and Shirley Lewis refused to bring the cocaine back from New York to Winston-Salem, North Carolina because they thought they were being followed. On April 7, 1989, Louis Jones, Murphy's former husband, and Jacqueline Colston, who was pregnant and age 17 at the time, went to New York to pick up 12 ounces of cocaine. The

trips were arranged and paid for by Defendant Murphy and Ophelia Fleming, jointly. During the return trip, Jones and Colston were arrested by the New Jersey State Police while in possession of approximately 11 1/2 ounces of cocaine. Colston agreed to telephone Murphy and Ophelia Fleming while being recorded by the New Jersey State Police. Colston told Murphy and Fleming that she and Jones were having car trouble on the New Jersey Turnpike. During the telephone conversation both Murphy and Ophelia Fleming told Colston to get "the twelve" (meaning the 12 ounces of cocaine) out of the car.

In May 1989, Donna Martin began working for Defendant Murphy as a secretary. Later than month, Martin and Gloria Austin, another secretary, arrived at Murphy['s residence while Murphy was "snorting" cocaine. Defendant Mabry and Ophelia Fleming were

present. Martin heard Murphy discussing her drug business with Mabry and Fleming. On May 29, 1989 Martin heard Murphy talking to Michelle Davis, Murphy's stepdaughter, by long distance telephone, at which time Murphy indicated to Davis that she could get one kilogram of powder cocaine for $18,000.00 instead of the usual price of $22,000.00. Murphy told Davis, "You can't get a better price, so go ahead and get the groceries". The same day Martin drove Murphy to a Western Union station located at Polo Road and University Parkway in Winston-Salem. Murphy told Martin she was going to wire transfer $18,000.00 to Michelle Davis (who was residing at Englewood, New Jersey) for one kilogram of powder cocaine. Of the $18,000.00 of the money belonged to Mabry, who had brought the money to Murphy earlier.

On the afternoon of May 30, 1989,

Michelle Davis transported by commercial airlines one kilogram of cocaine from LaGuardia Airport in New York City, to Greensboro at Murphy's direction. Davis then traveled by automobile with the kilogram of cocaine to Murphy's office/residence on Marvin Boulevard in Winston-Salem. After Davis arrived, Murphy had Donna Martin transport Davis with the cocaine to the Residence Inn, Room 424, in Winston-Salem. On May 30, 1989, undercover officers made surveillance photographs of Ophelia at Room 424 of the Residence Inn. Murphy had rented that room for three days. On the same day, Murphy gave 2 ounces of the powder cocaine to Martin and Davis, who delivered it to Ophelia Fleming at the Econo Lodge in Winston-Salem.

On the evening of May 30, 1989, vice officers kept surveillance on a motel room at the Econo Lodge in Winston-Salem which was

occupied by Ophelia Fleming, her daughter, Felicia Fleming, and 16 year old Christy McCloud. While there, Ophelia Fleming cooked a portion of the powder cocaine into "crack". Felicia Fleming subsequently left the motel and was stopped by officers for driving while license revoked. Felicia Fleming then called her mother at the motel room to inform Ophelia Fleming that the motel room was under surveillance. Ophelia Fleming then gave Christy McCloud the cooked portion ("crack") as well as the uncooked portion of the cocaine. McCloud then took the cocaine to her (McCloud's) residence.

On May 31, 1989, Christy McCloud took the "crack" cocaine to Ophelia Fleming's residence at 1086 East 17th Street, Winston-Salem, but Fleming was not at home. While at Ophelia Fleming's residence, McCloud received a telephone call from Ophelia Fleming, who was

at Murphy's house. With Murphy present, Ophelia Fleming told McCloud over the telephone to meet her and Murphy with the "crack" at the Gulf Mart located at 16th and Liberty Streets. Undercover officers, not knowing at the time that McCloud was going to meet Fleming and Murphy, arrested McCloud as she exited the back door of Ophelia Fleming's residence. Officers seized 49 "rocks" (11.74 grams) of "crack" cocaine.

On June 8, 1989, Defendant Mabry sold three "rocks" (.8 grams) of "crack" cocaine to a special agent of the Bureau of Alcohol, Tobacco, and Firearms who was working in an undercover capacity. The transaction occurred near 15th Street and Cleveland Avenue in Winston-Salem. Mabry had received the powder cocaine from Defendant Murphy and had cooked the powder into "crack".

During the first or second week of June,

1989, Michelle Davis flew to North Carolina from New Jersey and brought a quantity of cocaine to Betty Jean Murphy. Ophelia Fleming, Charles Billy Mabry, and several others came by the next day and picked up cocaine from Murphy at her office at 204 Marvin Boulevard, Winston-Salem, North Carolina. During the last week of June, 1989, Michelle Davis, a girl named "Dee Dee", and Michelle's twin daughters came to Winston-Salem from Englewood, New Jersey by bus. Murphy picked them up at the bus station and transported them to her office. Martin was present when they brought in all their luggage. Donna Martin then took Michelle Davis, her twin daughters, and "Dee Dee" to the Comfort Inn, University Parkway, Winston-Salem at Murphy's direction. They took all the luggage except one overnight bag which Murphy kept. They then proceeded to a house

in the 2900 block of Woodland Avenue in Winston-Salem. Martin served as a lookout while Mabry cooked the cocaine into "crack". While there, Martin observed Murphy give "Dee Dee" approximately 1/8th of an ounce of powder cocaine and Murphy told "Dee Dee" it was for making the trip.

On June 30, 1989, Donna Martin and an unknown Black male named "Robert" flew to LaGuardia Airport and met Michelle Davis. Martin spent the night at Davis' residence in Englewood, New Jersey. The next day, Martin and "Robert" were unable to get cocaine for Defendant Murphy, so they returned to Winston-Salem. That same night, July 1, 1989, Murphy and Julian Royster flew to New Jersey from North Carolina and came back the next day with an undetermined amount of cocaine. When Murphy returned on July 2, 1989, Martin observed Murphy "snorting" cocaine. Around

the middle of July 1989, Murphy and Royster flew back to New Jersey and brought back an undetermined quantity of cocaine. Martin quit working for Murphy on July 17, 1989.

On the evening of August 1, 1989, Defendant Mabry sold 15 "rocks" (5.4 grams) of "crack" cocaine for $300.00 to a special agent of the Bureau of Alcohol, Tobacco, and Firearms who was working in an undercover capacity. The transaction occurred at the rear of an apartment building in the Cleveland Avenue Projects in Winston-Salem.

On August 2, 1989, Ophelia Fleming was arrested at her residence and was subsequently convicted on September 12, 1989 as previously stated. Later, Ophelia Fleming began cooperating with officers. While wearing an electronic recording/monitoring device on November 27, 1989, Ophelia Fleming and Defendant Murphy discussed past and future

drug transactions. Ophelia Fleming testified that on at least two occasions after her (Fleming) trial, she obtained 2-ounce quantities of powder cocaine from Murphy.

ARGUMENT

THE DISTRICT COURT ERRED IN DENYING THE PETITIONER'S MOTION FOR JUDGMENT OF ACQUITTAL AT THE CLOSE OF THE GOVERNMENT'S EVIDENCE ON THE GROUND THAT SUCH EVIDENCE WAS INSUFFICIENT TO JUSTIFY A VERDICT OF GUILTY BEYOND A REASONABLE DOUBT BY A RATIONAL TRIER OF FACT.

It is well-established that, considering the sufficiency of the Government's evidence to withstand a motion for judgment of acquittal pursuant to the provisions of Rule 29 of the Federal Rules of Criminal Procedure, the trial court must determine whether there is substantial evidence which, taken in the light most favorable to the Government, would justify a verdict of guilty beyond a reasonable doubt by any rational trier of fact. Jackson vs. Virginia, 443 U.S. 307, 99 S.Ct. 2781, 61 L.Ed.2d 560 (1979). It is the responsibility of the trial judge to ascertain if the evidence of guilt is so substantial that it would permit the trier of fact, if it

were so convinced, to render a verdict of guilty. United States vs. Jones, 508 F.2d 1271 (4th Cir.), cert. denied, 421 U.S. 950 (1975). Where the question of a defendant's guilt is merely speculative, a conviction cannot stand. 538 F.2d 1063 (4th Cir. 1976). In weighing the sufficiency of the evidence for the Government, it is the obligation of the trial court to refrain from speculating on insubstantial evidence when a man's freedom is at stake. United States vs. Bradford, 423 F.2d 681 (6th Cir. 1970).

In order to obtain a conviction on a charge of conspiracy, the Government must present evidence to establish three constituent elements of the offense: (1) an agreement among the defendants to do something unlawful; (2) knowing and willing participation by the defendants in the agreement; and, (3) an overt act by the

defendants in furtherance of the purposes of the agreement. United States vs. Falcone, 311 U.S. 205, 61 S.Ct. 204, 85 L.Ed. 128 (1940).

The agreement among the defendants to do something unlawful is the essence of the crime of conspiracy. E.g. Lannell vs. United States, 420 U.S. 770, 95 S.Ct. 1284, 43 L.Ed.2d 616 (1975); see generally W. LaFave & A. Scott, Substantive Criminal Law Section 6.4 (1986); compare Yates vs. United States, 354 U.S. 298, 77 S.Ct. 1064, 1 L.Ed.2d 1356 (1957). The function of the overt act requirement in a conspiracy prosecution is to manifest "that the conspiracy is at work", rather than being a project resting solely in the minds of the conspirators or a fully completed operation no longer in existence. Yates vs. United States, supra. Once a conspiracy is established, a defendant can be found liable for any offense committed in

furtherance of the conspiracy while he was a member, provided that the offense was in the scope of or was a foreseeable consequence of the conspiracy. Pinkerton vs. United States, 328 U.S. 640, 66 S.Ct. 1180, 90 L.Ed. 1489 (1946); United States vs. Harris, 701 F.2d 1095 (4th Cir.) cert. denied, 463 U.S. 1214, 103 S.Ct. 3554, 77 L.Ed.2d 1400 (1983); United States vs. Sneed, 527 F.2d 590 (4th Cir. 1975).

Once a conspiracy has been established, it is presumed to continue until the last overt act is committed by any of the co-conspirators, unless the defendant proved that the conspiracy was terminated or that he had withdrawn from it. Hyde vs. United States, 225 U.S. 347, 32 S.Ct. 793, 56 L.Ed.1114 (1912); United States vs. Blackshire, 538 F.2d 569 (4th Cir.), cert. denied, 429 U.S. 840, 97 S.Ct. 113, 50 L.Ed.2d 108 (1976).

It is the position of Defendant Mabry that the evidence for the Government was insufficient to establish that he was part of the conspiracy headed by Defendant Murphy. While it is true that there was evidence tending to show that Defendant Mabry had been engaged in selling quantities of drugs, there is little evidence which would implicate him in any conspiracy headed by Defendant Murphy. Mere association with individuals who are engaged in a criminal conspiracy does not, by itself, justify a finding of guilt on charge of conspiracy. Close and careful consideration of the evidence in this case will establish that, with the exception of testimony from law enforcement officers of discrete sales of drugs, evidence implicating Defendant Mabry in the alleged conspiracy came from individuals who were actively cooperating with the Government in the hope that they

would receive substantial consideration with regard to sentencing. Such evidence must be received with great care and with considerable scrutiny.

When the decision of the Court of Appeals is viewed in context of all of the facts and circumstances surrounding this prosecution, it is clear that the evidence is insubstantial to justify a verdict finding the defendant guilty beyond a reasonable of doubt by a rational trier of fact.

CONCLUSION

Based upon the foregoing discussion, it is respectfully contended by the Petitioner that this Court issue its Writ of Certiorari to the United States Court of Appeals for the Fourth Circuit for the purpose of allowing review of this cause.

This the 23 day of March, 1992.

David F. Tamer
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CERTIFICATE OF SERVICE

The undersigned hereby certifies that he is an attorney at law licensed to practice in the State of North Carolina, is an attorney for the Petitioner and is a person of such age and discretion as to be competent to serve process.

That on the 23 day of March, 1992, he served a copy of the foregoing Writ of Certiorari by placing said copy in a first class post-paid envelope addressed as stated below, which is the last known address.

ADDRESSEE:

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David F. Tamer
Counsel for Petitioner

APPENDIX

APPENDIX

PUBLISHED

UNITED STATES COURT OF APPEALS

FOR THE FOURTH CIRCUIT

UNITED STATES OF AMERICA, Plaintiff-Appellee, vs. CHARLES BILLY MABRY, a/k/a Maze, Defendant-Appellant	No. 90-5490
UNITED STATES OF AMERICA, Plaintiff-Appellee, vs. BETTY JEAN MURPHY, Defendant-Appellant	No. 90-5685

Appeals from the United States District Court for the Middle District of North Carolina, at Winston-Salem. Norwood Carlton Tilley, Jr., District Judge.
(CR-89-280-WS)

Argued: October 4, 1991

Decided: December 24, 1991

Before MURNAGHAN, Circuit Judge, HERLONG, United States District Judge for the District of South Carolina, sitting by designation, and MERHIGE, Senior United States District Judge for the Eastern District of Virginia, sitting by designation.

Affirmed by published opinion. Judge Murnaghan wrote the opinion, in which Judge Herlong and Senior Judge Merhige joined.

COUNSEL

ARGUED: David Ferris Tamer, LAW OFFICES OF DAVID F. TAMER, Winston-Salem, North Carolina, for Appellant Mabry; Charles LeRoy White, II, Greensboro, North Carolina, for Appellant Murphy. Paul Alexander Weinman, Assistant United States Attorney, Greensboro, North Carolina, for Appellee. ON BRIEF: Robert H. Edmunds, Jr., United States Attorney, Greensboro, North Carolina, for Appellee.

OPINION

MURHAGHAN, Circuit Judge:

On December 26, 1989, a Grand Jury returned an indictment against defendants Charles Billy Mabry and Betty Jean Murphy, as well as against four named co-defendants. Count One of the indictment charged all of the

defendants with conspiracy to distribute cocaine hydrochloride and cocaine base ("crack") in violation of 21 U.S.C. Sec. 841(a)(1) (1981). The indictment also charged Murphy with distribution of cocaine in violation of 21 U.S.C. Sec. 845(a) (1981). Mabry was charged with two additional counts of distributing cocaine in violation of 21 U.S.C. Sec. 841(a)(1) and (b)(1)(B) (1981).

Mabry entered a plea of not guilty to all charges at his arraignment on January 2, 1990. Murphy similarly entered a not guilty plea. The jury found both defendants guilty on all charges. The district judge denied all Rule 29 motions for acquittal.

Mabry was sentenced to 120 months in prison, and eight years of supervised release. Murphy was sentenced to 245 months in prison, and twelve years of supervised release. Both defendants gave timely notices of appeal,

which we have consolidated for hearing.

I.

The case involved an extensive drug conspiracy centered around Murphy. There is ample evidence of the involvement of many others in the conspiracy, including defendant Mabry. Beginning as early as December 1988, Murphy conspired with others, including Homer Peak and Ophelia Fleming, to purchase cocaine and distribute it in the Winston-Salem area. At the beginning of Murphy's relationship with Fleming, Peak acted as the middleman between the two, with Murphy supplying him with quantities of drugs, that he would then give to Fleming who, with the assistance of her son Steven "Easy" Fleming, would sell the substance. After two such arranged transfers, Murphy began dealing directly with Fleming, who had proven her ability to sell the drugs quickly.

Peak was arrested on December 28, 1988, for selling .14 grams of crack to an undercover police officer. Fleming and members of her family and others were stopped by police responding to a tip on January 13, 1989. The successfully concealed 2.5 grams of crack they had in their possession and thus were not taken into custody.

In March and April of 1989, Fleming and another woman, Shirley Lewis, made two trips on commercial airlines and purchased or attempted to purchase drugs. The trips were sponsored and paid for by Murphy. During the second trip, on april 7, 1989, Fleming and Lewis refused to bring the cocaine they had purchased in New York back to North Carolina because they believed they were being followed. Murphy sent her former husband and another woman to New York to pick up the drugs. On the return trip, New Jersey Police

officers arrested them and discovered 11.5 grams of cocaine in the car. One of the couriers was recorded by New Jersey officials on the telephone conversing with Murphy. The courier told Murphy that he was having car trouble, and Murphy reminded him to "get the twelve" (referring apparently to the eleven and one-half grams of cocaine) out of the car.

In May of 1989 Donna Martin, who became the key witness connecting Mabry to the conspiracy, began to work for Murphy. Martin witnessed Murphy ingesting cocaine in the presence of Mabry on at least one occasion. She witnessed Mabry at the 204 Marvin Boulevard office of Murphy, and she often overheard discussions between the two about Mabry owing money to Murphy.

On May 29, 1989 Martin heard Murphy discussing a bargain drug purchase. Murphy told Martin that she would be purchasing a

quantity of drugs for $18,000.00, and Martin testified that $16,000.00 of that had come from cash provided by Mabry.

On June 18, 1989, Mabry sold three "rocks" of crack (.8 grams) to a special agent of the Bureau of Alcohol, Tobacco, and Firearms. Mabry had received the powder cocaine from Murphy and had transformed it into "crack" himself. Later in June, Mabry, along with others, was witnessed picking up cocaine from Murphy at her office.

On August 1, 1989, Mabry sold 5.4 grams of crack to an undercover police officer. The next day, Fleming was arrested and she called Murphy from custody. The conversation was taped, and it included discussion of past and future drug transactions.

II.

We turn first to the sufficiency of the conspiracy testimony. In order to justify a

conspiracy conviction, the government must show, first, that a conspiracy existed; then, that the defendant had knowledge of the conspiracy; and finally, that the defendant voluntarily became a part of the conspiracy. United States vs. Badalato, 701 F.2d 915, 920 (11th Cir. 1983). Commission of an over act is not required to prove a drug conspiracy. United States vs. Goldman, 750 F.2d 1221, 1226 (4th Cir. 1984). "Proof of a conspiracy may of course be by circumstantial evidence; it need not and normally will not be by direct evidence." United States vs. Giunta, 925 F.2d 758, 764 (4th Cir. 1991). Complete knowledge of all aspects of the conspiracy is not required:

> [O]ne may become a member of a conspiracy without full knowledge of all of its details, but if he joins the conspiracy with an understanding of the unlawful nature thereof and willfully joins in the plan on one occasion, it is sufficient to convict him of conspiracy, even

> through he had not participated before, and even though he played only a minor part. United States vs. Roberts, 881 F.2d 95, 101 (4th Cir. 1989).

The totality of the circumstances shown by the government will often suffice to infer the agreement necessary for a conspiracy conviction. United States vs. Crockett, 813 F.2d 1310, 1316 (4th Cir. 1987). The standard for reviewing a conspiracy conviction is that "the evidence and all reasonable inferences arising from it must be viewed in the light most favorable to the government, the prevailing party". United States vs. Laughman, 618 F.2d 1067, 1075 (4th Cir. 1980). And the issue on review is whether there is enough evidence so viewed to justify a conclusion of guilt by a trier of fact beyond a reasonable doubt. Glasser vs. United States, 315 U.S. 60, 90 (1942).

The conviction of Mabry for conspiracy

with Murphy was amply proven. There was evidence of Murphy's extensive conspiracy, of Mabry's consistent involvement with Murphy, of his presence when she ingested drugs, of his discussions with her about owing her money, of his providing her $16,000.00 to supplement drug purchase funds, of his appropriating drugs from Murphy's office, and of his selling crack on two occasions (one sample of which was produced from a quantity of cocaine obtained by Mabry from Murphy).

Mabry has argued that "there is little evidence which would implicate [him] in any conspiracy." Though there is more than just a little evidence here, a little evidence is sufficient to uphold a District Court's denial of a motion for acquittal. All that the government must show is that the trier of fact could reasonably infer from the evidence, viewed in the light most favorable to the

government, that the defendant was a willing participant in an ongoing conspiracy. There is more than enough evidence to support such an inference in this case, and accordingly, the district court's denial of the Rule 29 motion must be affirmed.

. . .

Accordingly, the decisions of the district court are

AFFIRMED.